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To: CWAwaters@EPA
cc: Daniel Burke <DBURKE@tceq.state.tx.us>, Frank Fuller
<FFULLER@tceq.state.tx.us>, Mary Ambrose <MAMBROSE@tceq.state.tx.us>, Stephanie
Bergeron <SBERGERO@tceq.state.tx.us>
Subject: Docket ID No. OW-2002-0050 - ANPRM - "Waters of the U.S."

Attached to this e-mail please find the Texas Commission on Environmental Quality's comments on the referenced proposed rulemaking. The files submitted are in WordPerfect 8 format. We appreciate the opportunity to submit comments of this issue.

If you have any questions or concerns about the content of the comments please contact Stephanie Bergeron, Director, Environmental Law Division at (512) 239-0615. If there is a problem with this electronic transmission please contact Daniel Burke at (512) 239-1543 or at dburke@tceq.state.tx.us.

Thank you.

April 16, 2003

Ms. Donna Downing
Water Docket
U.S. Environmental Protection Agency, Mailcode 4101T
1200 Pennsylvania Ave., NW
Washington D.C. 20460

Attention Docket ID No. OW-2002-0050

Dear Ms. Downing:

Thank you for the opportunity to respond to the U.S. Army Corps of Engineers (Corps) and U.S. Environmental Protection Agency (EPA) Advance Notice of Proposed Rulemaking (ANPRM) on the regulatory definition of "Waters of the United States" dated January 15, 2003. Due to the breadth of comments solicited in the ANPRM, the Texas Commission on Environmental Quality (TCEQ) is providing general comments on Texas' tributary systems and the role of the state's water quality standards in protecting wetlands and other waters functions and values. Additionally, we recommend that the federal agencies recognize and operate within the narrow holding of the *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)* ruling.

Texas has an estimated 191,228 miles of stream and 6,471,012 acres of wetlands. Most of the tributary systems in Texas consist of non-navigable streams. For example, approximately 75 percent of the stream miles in Texas are intermittent; approximately 48 percent of Texas Pollutant Discharge Elimination System (TPDES) permitted wastewater discharges flow directly into intermittent streams. The functions of these tributaries have a direct influence on downstream water quality.

The Texas Surface Water Quality Standards (WQS) identify recreation, water supply, aquatic life, and wetland water quality functions as uses that will be maintained and protected for all water in the state in which these uses can be achieved. Consistent with the federal definition of waters of the U.S., the definition of water in the state includes wetlands. The WQS define wetland water quality functions to include storm water storage and retention which also moderates extreme water level fluctuations; shoreline protection against erosion through the dissipation of wave energy, water velocity, and the anchoring of sediments; habitat for aquatic life; and the removal and transformation of nutrients and toxic substances. Accordingly, these water quality characteristics of wetlands should be carefully considered in the development of this rule.

The scope of the definition of "Waters of the United States" will determine the ultimate impact on related

water quality programs, including 401 certification and TMDL development. The TCEQ supports continued

Ms. Donna Downing

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and consistent federal wetlands jurisdiction and oversight, not specifically precluded by the narrow holding of *SWANCC*. Should you have any questions, please feel free to contact Stephanie Bergeron, Director, Environmental Law Division, at (512) 239-0615.

Sincerely,

Margaret Hoffman, Executive Director
Texas Commission on Environmental Quality

cc: Mr. Ted Rugiel, U.S. Army Corps of Engineers
Mr. Duane Taylor, Natural Resources Policy Director, Texas Office of State-Federal Relations